

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

<p>UNITED STATES OF AMERICA</p> <p>Plaintiff/Counter Defendant,</p> <p>v.</p> <p>ASHLAND INC., THE BOEING COMPANY, CERTAINTEED CORPORATION, ALLIANT TECHSYSTEMS INC., AS SUCCESSOR TO CORDANT TECHNOLOGIES, INC., AND AS SUCCESSOR TO HERCULES, INC., HALLMARK CARDS INCORPORATED, HONEYWELL FEDERAL MANUFACTURING AND TECHNOLOGIES LLC, LUCENT TECHNOLOGIES INC., AS SUCCESSOR TO WESTERN ELECTRIC CO. AND A T & T TECHNOLOGIES, INC., MALLINCKRODT INC. AND BNSF RAILWAY COMPANY</p> <p>Defendants.</p>	<p>CIVIL ACTION NO. 6:08-cv-01401-MLB-KMH</p>
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TABLE OF CONTENTS

	<u>Page</u>
I. BACKGROUND	1
II. JURISDICTION	2
III. PARTIES BOUND	3
IV. DEFINITIONS.....	3
V. GENERAL PROVISIONS	7
VI. PERFORMANCE OF THE WORK BY SETTLING PERFORMING DEFENDANTS ..	8
VII. TECHNICAL IMPRACTICABILITY	12
VIII. REMEDY REVIEW	13
IX. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS	14
X. ACCESS AND INSTITUTIONAL CONTROLS	15
XI. REPORTING REQUIREMENTS	17
XII. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS.....	18
XIII. PROJECT COORDINATORS	19
XIV. PERFORMANCE GUARANTEE.....	20
XV. CERTIFICATION OF COMPLETION	23
XVI. EMERGENCY RESPONSE.....	25
XVII. PAYMENT FOR RESPONSE COSTS	26
XVIII. DISBURSEMENT OF SPECIAL ACCOUNT FUNDS	30
XIX. INDEMNIFICATION AND INSURANCE.....	33
XX. FORCE MAJEURE	34
XXI. DISPUTE RESOLUTION.....	35
XXII. STIPULATED PENALTIES.....	37
XXIII. COVENANTS BY PLAINTIFF	40
XXIV. RESERVATION OF RIGHTS	42
XXV. COVENANTS BY SETTLING DEFENDANTS AND SETTLING FEDERAL AGENCIES.....	45
XXVI. EFFECT OF SETTLEMENT	48

XXVII.	ACCESS TO INFORMATION	49
XXVIII.	RETENTION OF RECORDS.....	49
XXIX.	NOTICES AND SUBMISSIONS.....	51
XXX.	EFFECTIVE DATE.....	52
XXXI.	RETENTION OF JURISDICTION.....	52
XXXII.	APPENDICES	52
XXXIII.	COMMUNITY RELATIONS	53
XXXIV.	MODIFICATION	53
XXXV.	LODGING AND OPPORTUNITY FOR PUBLIC COMMENT	53
XXXVI.	SIGNATORIES/SERVICE.....	53
XXXVII.	FINAL JUDGMENT	54

I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§9606, 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Chemical Commodities Superfund Site in Olathe, Kansas, together with accrued interest; and (2) performance of studies and response work at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) (“NCP”).

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. §9621(f)(1)(F), EPA notified the State of Kansas (the “State”) on March 30, 2006, of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. §9622(j)(1), EPA notified the Department of Interior on March 30, 2006, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee to participate in the negotiation of this Consent Decree.

E. The defendants that have entered into this Consent Decree (“Settling Defendants”) do not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor do they acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment. The Settling Federal Agencies do not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted by the Settling Defendants.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on May 31, 1994, 59 Fed. Reg. 27989.

G. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, The Boeing Company (“Boeing”) and the U.S. Defense Logistics Agency (“DLA”) commenced on May 15, 2000, a Remedial Investigation and Feasibility Study (“RI/FS”) for the Site pursuant to 40 C.F.R. §300.430.

H. Boeing and DLA completed a Remedial Investigation (“RI”) Report in December 2001. Following additional site investigation required by EPA, Boeing and DLA completed a Feasibility Study (“FS”) Report on March 23, 2004.

I. Pursuant to Section 117 of CERCLA, 42 U.S.C. §9617, EPA published a notice of the completion of the FS and of the proposed plan for remedial action in July 2004, in a major local newspaper of general circulation. The State of Kansas concurred on the proposed plan. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. In response to comments received from the state and the local community during the public comment period, Boeing and DLA agreed to conduct additional analyses. A Supplemental Investigation Report and Second Feasibility Study Addendum were completed in June 2005.

J. EPA published a notice of the completion of the Supplemental Investigation Report and Second Feasibility Study Addendum and of the revised proposed plan for remedial action on August 15, 2005 in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the revised proposed plan for remedial action. A public meeting was held on July 26, 2005. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

K. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on September 28, 2005, on which the State has given its concurrence. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

L. Based on the information presently available to EPA, the EPA believes that the Work will be properly and promptly conducted by the Settling Performing Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.

M. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the Remedial Action selected by the ROD and the Work to be performed by the Settling Performing Defendants shall constitute a response action taken or ordered by the President.

N. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall

not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Settling Performing Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing any Settling Performing Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Performing Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree costing more than \$100,000. Settling Performing Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Performing Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"BNSF Property" shall mean that portion of the Site in which the BNSF Railway Company ("BNSF") holds an ownership, easement and/or right-of-way interest.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

"Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXXII). In the event of conflict between this Decree and any appendix, this Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall be the effective date of this Consent Decree as provided in Section XXX.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“Future Oversight Costs” shall mean that portion of Future Response Costs that EPA incurs in monitoring and supervising Settling Performing Defendants’ performance of the Work to determine whether such performance is consistent with the requirements of this Consent Decree, including costs incurred in reviewing plans, reports and other documents submitted pursuant to this Consent Decree, as well as costs incurred in overseeing implementation of the Work; however, Oversight Costs do not include, inter alia: the costs incurred by the United States pursuant to Sections VIII (Remedy Review), X (Access and Institutional Controls), XVI (Emergency Response), and Paragraph 113 (Work Takeover) of Section XXIV (Reservation of Rights), or the costs incurred by the United States in enforcing the terms of this Consent Decree, including all costs incurred in connection with Dispute Resolution pursuant to Section XXI (Dispute Resolution) and all litigation costs.

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VIII (Remedy Review), X (Access and Institutional Controls), Paragraph 113 (Work Takeover) of Section XXIV (Reservation of Rights) and Section XVI (Emergency Response). Future Response Costs shall not include costs incurred by EPA in implementing the Indoor Air Program or Institutional Controls.

“Indoor Air Program” shall mean the program to sample and monitor indoor air in residences in the vicinity of the Site and to install, operate, monitor and maintain ventilation systems in residences where appropriate.

“Interim Response Costs” shall mean all costs, including direct and indirect costs, paid by the United States in connection with the Site between November 26, 2006 and the Effective Date.

“Interest,” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Operation and Maintenance” or “O & M” shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan

approved or developed by EPA pursuant to this Consent Decree and the Statement of Work (SOW).

“Orphan Share” shall mean the amount that will be provided by the United States to the Settling Defendants in exchange for the Settling Defendants’ settlement as provided under this Consent Decree estimated at \$1.77 million. The Orphan Share compensation will be in the form of forgiveness of Past Response Costs, Interim Response Costs and waiver of Future Oversight Costs.

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper case letter.

“Parties” shall mean the United States and the Settling Defendants.

“Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site from January 1, 2001 through November 26, 2006, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. §9607(a) through such date. Past Response Costs shall also include costs incurred by Settling Defendants and Settling Federal Agencies for response actions performed at the Site pursuant to Administrative Orders on Consent issued by EPA in 1998 (CERCLA Docket No. 7-99-0001), 2000 (CERCLA Docket No. 7-2000-0019) and 2003 (CERCLA Docket No. 07-2003-0036).

“Performance Standards” shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in Section 8 of the ROD and Section 3 of the SOW.

“Plaintiff” shall mean the United States of America.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901 *et seq.* (also known as the Resource Conservation and Recovery Act).

“Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to the Chemical Commodities Site signed on September 28, 2005, by the Superfund Division Director, EPA Region 7, and all attachments thereto. The ROD is attached as Appendix A.

“Remedial Action” shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Performing Defendants to implement the ROD, in accordance with the SOW and the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA.

“Remedial Action Work Plan” shall mean the document developed pursuant to Paragraph 11 of this Consent Decree and approved by EPA and any amendments thereto.

“Remedial Design” shall mean those activities to be undertaken by the Settling Performing Defendants to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

“Remedial Design Work Plan” shall mean the document developed pursuant to Paragraph 10 of this Consent Decree and approved by EPA and any amendments thereto.

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Settling Defendants” shall mean those Parties identified in Appendix D, and shall include Settling Performing Defendants and Settling Non-Performing Defendants.

“Settling Federal Agencies” shall mean those departments, agencies, and instrumentalities of the United States identified in Appendix G which are resolving any claims which have been or could be asserted against them with regard to this Site as provided in this Consent Decree.

“Settling Non-Performing Defendants” shall mean those Parties identified in Appendices F-1 and F-2 and BNSF.

“Settling Performing Defendants” shall mean those Parties identified in Appendix E.

“Site” shall mean the Chemical Commodities Superfund Site, encompassing approximately 1.5 acres, located at 320 South Blake Street in Olathe, Johnson County, Kansas, and adjoining property in which BNSF Railway Company has an ownership, easement and/or right-of-way interest, including non-contiguous property leased by BNSF or its predecessors to Chemical Commodities from 1968 until 1994, and all areas where contamination from the Site has migrated. The Site is depicted generally on a map attached as Appendix C.

“State” shall mean the State of Kansas.

“Statement of Work” or “SOW” shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the Site, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

“Supervising Contractor” shall mean the principal contractor retained by the Settling Performing Defendants to supervise and direct the implementation of the Work under this Consent Decree.

“United States” shall mean the United States of America, including all of its departments, agencies and instrumentalities, which includes without limitation EPA, the Settling Federal Agencies and any federal natural resources trustee.

“Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); and (3) any “hazardous material” under K.S.A. § 65-3471.

“Work” shall mean all activities Settling Performing Defendants are required to perform under this Consent Decree, except those required by Section XXVIII (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by the Settling Performing Defendants, to reimburse response costs of the Plaintiff and the Settling Defendants, and to resolve the claims of Plaintiff against Settling Defendants and the claims of Settling Defendants which have been or could have been asserted against the United States and each other with regard to this Site as provided in this Consent Decree.

6. Commitments by Settling Defendants and Settling Federal Agencies.

a. Settling Performing Defendants shall finance and perform the Work in accordance with this Consent Decree, the ROD, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Performing Defendants and approved by EPA pursuant to this Consent Decree. Settling Performing Defendants shall also reimburse the United States for Future Response Costs as provided in this Consent Decree. The United States on behalf of Settling Federal Agencies and subject to Paragraph 70 shall also make the payments required under Section XVII (Payment for Response Costs).

b. The obligations of Settling Performing Defendants to finance and perform the Work and to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Settling Performing Defendants to implement the requirements of this Consent Decree, the remaining Settling Performing Defendants shall complete all such requirements.

c. Settling Non-Performing Defendants have agreed to remit to the CCI Escrow Account their respective payments for response costs as shown in Appendix H, to satisfy all claims arising pursuant to this Consent Decree. Upon remittance of payment to the CCI Escrow Account, the De Minimis Settling Non-Performing Defendants identified in Appendix F-2 shall have no further obligation under this Consent Decree, the payment constituting final settlement.

d. BNSF shall be responsible for complying with all notice, access and institutional control requirements for the BNSF Property as set forth in this Consent Decree.

7. Compliance With Applicable Law. All activities undertaken by Settling Performing Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Performing Defendants must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits.

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Settling Performing Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Settling Performing Defendants may seek relief under the provisions of Section XX (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

VI. PERFORMANCE OF THE WORK BY SETTLING PERFORMING DEFENDANTS

9. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Settling Performing Defendants pursuant to Sections VI (Performance of the Work by Settling Performing Defendants), VIII (Remedy Review), IX (Quality Assurance, Sampling and Data Analysis), and XVI (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA. Within 20 days after the Effective Date of this Consent Decree, Settling Performing Defendants shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor, Settling Performing Defendants shall confirm that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995). EPA will issue a notice of disapproval or an authorization to proceed.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Performing Defendants in writing. Settling Performing Defendants shall submit to EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Performing Defendants may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within 21 days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Section and this failure prevents the Settling Performing

Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Performing Defendants may seek relief under the provisions of Section XX (Force Majeure) hereof.

d. If at any time after the issuance of a notice to proceed Settling Performing Defendants propose to change the Supervising Contractor, Settling Performing Defendants shall notify EPA of the name, title and qualifications of the proposed new Supervising Contractor and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

10. Remedial Design.

a. Within 90 days after EPA's issuance of an authorization to proceed pursuant to Paragraph 9, Settling Performing Defendants shall submit to EPA a work plan for the design of the Remedial Action to be performed at the Site ("Remedial Design Work Plan" or "RD Work Plan"). The Remedial Design Work Plan shall provide for design of the remedy set forth in the ROD, in accordance with the SOW and for achievement of the Performance Standards and other requirements set forth in the ROD, this Consent Decree and/or the SOW. Upon its approval by EPA, the RD Work Plan shall be incorporated into and become enforceable under this Consent Decree. Within 90 days after EPA's issuance of an authorization to proceed, the Settling Performing Defendants shall submit to EPA a Health and Safety Plan for field design activities which conform to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120 as set forth in the SOW.

b. The RD Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of: (1) design sampling and analysis (including, but not limited to, a Remedial Design Quality Assurance Project Plan (RD QAPP) in accordance with Section IX (Quality Assurance, Sampling and Data Analysis)); (2) a preliminary design submittal; (3) a pre-final design submittal; and (4) a final design submittal.

c. Upon approval of the RD Work Plan by EPA, and submittal of the Health and Safety Plan for all field activities to EPA, Settling Performing Defendants shall implement the RD Work Plan. The Settling Performing Defendants shall submit to EPA all plans, submittals and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XII (EPA Approval of Plans and Other Submissions). Unless otherwise agreed to by the Project Coordinators, Settling Performing Defendants shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan.

d. The preliminary design submittal shall include the elements set forth in Section 4, Task 2 of the SOW.

e. The pre-final and final design submittals shall include the elements set forth in Section 4, Task 2 of the SOW.

11. Remedial Action.

a. Within 60 days after EPA's approval of the final design submittal, Settling Performing Defendants shall submit to EPA a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the ROD and achievement of the Performance Standards, in accordance with this Consent Decree, the ROD, the SOW and the design plans and specifications developed in accordance with the Remedial Design Work Plan and approved by EPA. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time as they submit the Remedial Action Work Plan, Settling Performing Defendants shall submit to EPA a Health and Safety Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to 29 C.F.R. §1910.120.

b. The Remedial Action Work Plan shall include the elements set forth in Section 4, Task 3 of the SOW.

c. Upon approval of the Remedial Action Work Plan by EPA, Settling Performing Defendants shall implement the activities required under the Remedial Action Work Plan. The Settling Performing Defendants shall conduct all activities and submit to EPA all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XII (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Performing Defendants shall not commence physical Remedial Action activities at the Site prior to approval of the Remedial Action Work Plan.

12. The Settling Performing Defendants shall continue to implement the Remedial Action and O&M until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

13. Modification of the SOW or Related Work Plans.

a. If EPA determines that modification of the Work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may require that such modification be incorporated in the SOW and/or such work plans, provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD.

b. For the purposes of this Paragraph 13, Paragraph 55 and Paragraph 56 only, the "scope of the remedy selected in the ROD" is:

(1) Excavation of a specified volume of soils in the 0-5' depth range containing metals and volatile organic compounds ("VOCs") as specified on Figure 1 of the SOW;

- (2) Excavation to bedrock using a large diameter drill at approximately 8-10 locations on-Site to remove soils containing high concentrations of VOCs;
- (3) Transportation of excavated soils to an offsite disposal facility;
- (4) Chemical oxidation treatment of soils and bedrock surface in areas of deep excavation described in item (2) above;
- (5) Backfill of excavated areas;
- (6) Construction of soil cap over entire fenced area of the Site;
- (7) Implementation of land use restrictions;
- (8) Chemical oxidation treatment of groundwater in specified areas with high VOC concentrations;
- (9) Monitored natural attenuation of VOC impacted groundwater;
- (10) Groundwater monitoring;
- (11) Installation, operation and maintenance of ventilation systems; and
- (12) Institutional controls to restrict use of groundwater in VOC impacted area.

c. Notwithstanding Paragraph 13.a., EPA may not require modification of the Work specified in the SOW and/or Work Plans to incorporate implementation of the Indoor Air Program or Institutional Controls by Settling Performing Defendants.

d. If Settling Performing Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XXI (Dispute Resolution), Paragraph 89 (record review). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

e. Settling Performing Defendants shall implement any Work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW in accordance with this Paragraph.

f. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree; provided, however, EPA may not require Settling Performing Defendants to implement the Indoor Air Program or Institutional Controls.

14. Settling Defendants acknowledge and agree that nothing in this Consent Decree, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards.

15. a. Settling Performing Defendants shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards. The Settling Performing Defendants shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Settling Performing Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state. The identity of the receiving facility and state will be determined by the Settling Performing Defendants following the award of the contract for Remedial Action construction. The Settling Performing Defendants shall provide the information required by this Paragraph as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site treatment, storage or disposal facility subject to regulation under Subtitle C of RCRA, Settling Performing Defendants shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. 300.440. Settling Performing Defendants shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulations cited in the preceding sentence.

VII. TECHNICAL IMPRACTICABILITY

16. At the completion of a sustained period of operation of the remedy of not less than two years following approval of the Interim Remedial Action Report as set forth in the SOW, the Settling Performing Defendants may petition EPA to waive compliance with one or more of the Performance Standards set forth in the ROD and the SOW, based upon a demonstration that achievement of specific Performance Standards is technically impracticable from an engineering perspective. Such a petition may be submitted to EPA in the form of a Technical Impracticability (TI) Evaluation Report as set forth in the SOW.

17. EPA shall review and consider the information in the petition, and any other relevant information, and shall make a determination as to:

a. whether compliance with any of the Maximum Contaminant Levels (MCLs) or the Performance Standards shall be waived;

b. whether alternative standards, if any, or other protective measures, if any, shall be established; and

c. whether any part of the Remedial Action shall be modified or terminated in whole or in part.

EPA's determination as to technical impracticability shall be consistent with the NCP and any other applicable regulations or guidance. The Settling Performing Defendants shall have judicial review of EPA's determination to the extent allowed by law.

18. Any technical impracticability waiver that is granted pursuant to this Section shall be subject to the five-year review provision of Section 121(c) of CERCLA, 42 U.S.C. § 9621(c).

19. Nothing herein shall preclude or authorize any of the Settling Performing Defendants from petitioning EPA to amend the ROD based on any of the criteria specified in Section 121(d)(4) of CERCLA, 42 U.S.C. § 9621(d)(4).

VIII. REMEDY REVIEW

20. Periodic Review. Settling Performing Defendants shall conduct any studies and investigations reasonably requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA, 42 U.S.C § 9621(c), and any applicable regulations.

21. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP; provided, however, EPA may not require Settling Performing Defendants to implement the Indoor Air Program or Institutional Controls.

22. Opportunity To Comment. Settling Performing Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C §§ 9613(k)(2) or 9617, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA, 42 U.S.C. §9621(c), and to submit written comments for the record during the comment period. Prior to initiation of any comment period, Settling Performing Defendants will be provided with all information on which EPA bases its decision.

23. Settling Performing Defendants' and/or Non-De Minimis Settling Non-Performing Defendants' and BNSF's Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, the Settling Performing Defendants and/or Non-De Minimis Settling Non-Performing Defendants and BNSF shall undertake such further response actions to the extent that the reopener conditions in Paragraph 107 or Paragraph 108 (United States' reservations of liability based on unknown conditions or new information) are satisfied; provided, however, EPA may not require Settling Performing Defendants and/or Non-De Minimis Settling Non-Performing Defendants and BNSF to implement the Indoor Air Program or Institutional Controls. The Settling Performing Defendants' and/or Non-De Minimis Settling Non-Performing Defendants' and BNSF's obligation under this Paragraph shall not exceed \$4,897,425. This monetary limitation applies only to Settling Performing Defendants' and/or

Non-De Minimis Settling Non-Performing Defendants' and BNSF's obligation to perform further response actions and does not limit any right the United States may have to institute proceedings in this action or in a new action seeking reimbursement of all additional costs of response pursuant to paragraphs 107(b) and 108(b). Settling Performing Defendants and/or Non-De Minimis Settling Non-Performing Defendants and BNSF may invoke procedures set forth in Section XXI (Dispute Resolution) to dispute (a) EPA's determination that the reopener conditions of Paragraph 107 or Paragraph 108 of Section XXIV (Reservations of Rights) are satisfied, (b) EPA's determination that the Remedial Action is not protective of human health and the environment, or (c) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions will be resolved pursuant to Paragraph 89 (record review).

24. Submission of Plans. If Settling Performing Defendants and/or Non-De Minimis Settling Non-Performing Defendants and BNSF are required to perform the further response actions pursuant to Paragraph 23, they shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Performing Defendants) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

IX. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

25. Settling Performing Defendants shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001) "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and subsequent amendments to such guidelines upon notification by EPA to Settling Performing Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Performing Defendants shall submit to EPA for approval, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW and the NCP. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection as to the validity of the data, in any proceeding under this Decree. Settling Performing Defendants shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Performing Defendants in implementing this Consent Decree. In addition, Settling Performing Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Performing Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree; however, upon approval by EPA, the Settling Performing Defendants may use other analytical methods which are as stringent as or more stringent than the CLP-approved methods. Settling Performing Defendants shall ensure that all

laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Settling Performing Defendants shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. Settling Performing Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

26. Upon request, the Settling Performing Defendants shall allow split or duplicate samples to be taken by EPA or its authorized representatives. To the extent practicable, Settling Performing Defendants shall notify EPA not less than 14 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow the Settling Performing Defendants to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of the Settling Performing Defendants' implementation of the Work.

27. Settling Performing Defendants shall submit to EPA four copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Performing Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

28. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

X. ACCESS AND INSTITUTIONAL CONTROLS

29. On March 21, 2006 Chemical Commodities, Inc. (CCI) authorized EPA and its employees and representatives to enter the portion of the Site owned by CCI for the purposes of responding to the release of hazardous substances. Commencing on the Effective Date of this Consent Decree, pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 104(e), and Section 300.400(d)(3) of the NCP, EPA designates the Settling Performing Defendants and their contractors as EPA's duly authorized representatives solely for the purpose of access to the Site to perform the Work required under this Consent Decree. The United States does not assume any liability by virtue of the designation of the Settling Performing Defendants and their contractors as EPA's duly authorized representatives under CERCLA and the NCP.

30. Commencing on the Effective Date of this Consent Decree, the United States and its representatives, including EPA and its contractors, and the Settling Performing Defendants and their contractors as EPA's duly authorized representatives, shall have access to the BNSF property pursuant to the Access Agreement attached to this Consent Decree as Appendix I,

solely for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

- a. Monitoring and implementing the Work;
- b. Verifying any data or information submitted to the United States;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- f. Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;
- g. Implementing the Work pursuant to the conditions set forth in Paragraph 113 (Work Takeover) of this Consent Decree;
- h. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Performing Defendants or their agents, consistent with Section XXVII (Access to Information);
- i. Assessing Settling Performing Defendants' compliance with this Consent Decree; or
- j. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree.

31. If other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than any of the Settling Defendants, Settling Performing Defendants shall use best efforts to secure from such persons an agreement to provide access thereto for Settling Performing Defendants, as well as for the United States, on behalf of EPA and its representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 30 of this Consent Decree;

32. For purposes of Paragraph 31 of this Consent Decree, "best efforts" includes an offer of reasonable consideration for access. If any access agreements required by Paragraph 31 of this Consent Decree are not obtained within 45 days of the date of entry of this Consent Decree or within 45 days of the date that access will be required, whichever is later, Settling Performing Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Performing Defendants have taken to attempt to comply with Paragraph 31 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Performing Defendants in obtaining access.

33. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Performing Defendants shall reasonably cooperate with EPA's efforts to secure such governmental controls.

34. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

XI. REPORTING REQUIREMENTS

35. In addition to any other requirement of this Consent Decree, Settling Performing Defendants shall submit to EPA written periodic progress reports that include the following elements: (a) a description of activities performed during the reporting period; (b) a summary of sampling results and tests obtained during the reporting period; (c) a summary of deliverables submitted to EPA during the reporting period; (d) a description of anticipated work to be performed during the next reporting period; and (e) the percent completion, delays (if any), and efforts to mitigate delays (if required). The periodic progress reports required by this Section may be submitted to EPA electronically. Settling Performing Defendants shall submit these progress reports to EPA at the intervals set forth in the SOW or as otherwise agreed to by the Project Coordinators. The first progress report shall be submitted 45 days following approval of the Remedial Design Work Plan and shall be submitted by the fifteenth day following the end of each reporting period until EPA notifies the Settling Performing Defendants pursuant to Paragraph 56.b. of Section XV (Certification of Completion). If reasonably requested by EPA Settling Performing Defendants shall also provide briefings for EPA to discuss the progress of the Work.

36. To the extent practicable, the Settling Performing Defendants shall notify EPA of any change in the schedule described in the progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

37. Upon the occurrence of any event during performance of the Work that Settling Performing Defendants are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Settling Performing Defendants shall, within 24 hours of having knowledge of the onset of such event, orally notify the EPA Project Coordinator or, in the event of the unavailability of the EPA Project Coordinator, the Emergency Response Section, Region 7, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103, 42 U.S.C. § 9603, or EPCRA Section 304, 42 U.S.C. § 11004.

38. Within 30 days of having knowledge of the onset of such an event, Settling Performing Defendants shall furnish to Plaintiff a written report, signed by the Settling Performing Defendants' Project Coordinator, setting forth the events which occurred and the

measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Performing Defendants shall submit a report setting forth all actions taken in response thereto.

39. Settling Performing Defendants shall submit four copies of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Upon agreement between EPA and the Settling Performing Defendants, Settling Performing Defendants may submit in electronic form all portions of any report or other deliverable. Settling Performing Defendants are required to submit pursuant to the provisions of this Consent Decree.

40. All reports and other documents submitted by Settling Performing Defendants to EPA (other than the periodic progress reports referred to above) which purport to document Settling Performing Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Performing Defendants.

XII. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

41. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Performing Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Performing Defendants at least one notice of deficiency and an opportunity to cure within 30 days, except where to do so would cause serious disruption to the Work or where a previous submission has been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

42. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 41(a), (b), or (c), Settling Performing Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XXI (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 41(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XXII (Stipulated Penalties).

43. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 41(d), Settling Performing Defendants shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XXII (Stipulated Penalties), shall accrue during the 30-day period, or otherwise specified period, but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 44 and 45.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 41(d), Settling Performing Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Performing Defendants of any liability for stipulated penalties under Section XXII (Stipulated Penalties).

44. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Performing Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Settling Performing Defendants shall implement any such plan, report, or item as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XXI (Dispute Resolution).

45. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Performing Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Performing Defendants invoke the dispute resolution procedures set forth in Section XXI (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XXI (Dispute Resolution) and Section XXII (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XXII (Stipulated Penalties).

46. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XIII. PROJECT COORDINATORS

47. Within 30 days of Effective Date of this Consent Decree, Settling Performing Defendants and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators. If a Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Performing Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Performing Defendants' Project Coordinator shall not be an attorney for any of the Settling Performing Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

48. Plaintiff may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator shall have the

authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

49. EPA's Project Coordinator and the Settling Performing Defendants' Project Coordinator will meet on a monthly basis or at such longer intervals as agreed to by the Project Coordinators.

XIV. PERFORMANCE GUARANTEE

50. In order to ensure the full and final completion of the Work, Settling Performing Defendants shall establish and maintain a Performance Guarantee for the benefit of EPA in the amount of \$5,246,000 (hereinafter "Estimated Cost of the Work") in one or more of the following forms, which must be satisfactory in form and substance to EPA:

a. A surety bond unconditionally guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties of Federal bonds as set forth in Circular 570 of the U.S. Department of Treasury;

b. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institutions (i) that has the authority to issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a U.S. Federal or State agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a U.S. Federal or State agency;

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a State agency;

e. A demonstration by one or more Settling Performing Defendants that each such Settling Performing Defendant meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work, provided all other requirements of 40 C.F.R. § 264.143(f) are satisfied; or

f. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (1) a direct or indirect parent company of a Settling Performing Defendant, or (2) a company that has a "substantial business relationship" provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of

EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee hereunder.

51. If at any time during the effective period of this Consent Decree, the Settling Performing Defendants provide a Performance Guarantee for completion of the Work by means of a guarantee pursuant to Paragraph 50. e. or 50. f. above, such Settling Performing Defendants shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods unless otherwise provided in this Consent Decree, including but not limited to: (a) the initial submission of financial reports and statements from the relevant entity's chief financial officer and independent certified public accountant; (b) the annual re-submission of such reports and statements within 90 days after the close of each such entity's fiscal year; and (c) the notification of EPA within 90 days after the close of any fiscal year in which such entity no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1). For the purposes of the Performance Guarantee methods specified in this Section XIV, references in 40 C.F.R. Part 264 Subpart H, to "closure", "post-closure", and "plugging and abandonment" shall be deemed to refer to the Work required under this Consent Decree, and the terms "current closure cost estimate", "current post-closure cost estimate" and "current plugging and abandonment costs estimate" shall be deemed to refer to the Estimated Cost of the Work.

52. In the event that EPA determines at any time that a Performance Guarantee provided by Settling Performing Defendants pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that any Settling Performing Defendant becomes aware of information indicating that a Performance Guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Settling Performing Defendants, within 30 days of receipt of notice of EPA's determination or, as the case may be, within 30 days of any Settling Performing Defendant becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of Performance Guarantee listed in Paragraph 50 of this Consent Decree that satisfies all requirements set forth in this Section XIV. In seeking approval for a revised or alternative form of Performance Guarantee, Settling Performing Defendants shall follow the procedures set forth in Paragraph 54 of this Consent Decree. Settling Performing Defendants' inability to post a Performance Guarantee for completion of the Work shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of Settling Performing Defendants to complete the Work in strict accordance in the terms hereof.

53. The commencement of any Work Takeover pursuant to Paragraph 113 of this Consent Decree shall trigger EPA's right to receive the benefit of any Performance Guarantee(s) provided pursuant to Paragraph 50. a., b., c., d., or f., and at such time EPA shall have immediate access to resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind as needed to continue and complete the Work assumed by EPA under the Work Takeover. If for any reason EPA is unable to promptly secure the resources guaranteed under any Performance Guarantee pursuant to Paragraph 50. e., whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, Settling

Performing Defendants shall immediately upon written demand from EPA deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date as determined by EPA.

54. Modification of the Amount and/or Form of Performance Guarantee

a. Reduction of Amount of Performance Guarantee. If Settling Performing Defendants can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 50 above after entry of this Consent Decree, Settling Performing Defendants may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, petition EPA in writing to request a reduction in the amount of the Performance Guarantee provided under this Section so that the amount of the Performance Guarantee is equal to the estimated cost of the remaining Work to be performed. Settling Performing Defendants shall submit a written proposal for such reduction to EPA that shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost is calculated. In seeking approval for a revised or alternative form of Performance Guarantee, Settling Performing Defendants shall follow the procedures set forth in Paragraph 54. b.(2) of this Consent Decree. If EPA decides to accept such a proposal, EPA shall notify the petitioning Settling Performing Defendants of such decision in writing. After receiving EPA's written acceptance, Settling Performing Defendants may reduce the amount of the Performance Guarantee in accordance with, and to the extent permitted by, such written acceptance. In the event of a dispute, Settling Performing Defendants may reduce the amount of the Performance Guarantee required hereunder only in accordance with the final administrative or judicial decision resolving the dispute. No change to the form or terms of any Performance Guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraphs 52 and 54. b.(2) of this Consent Decree.

b. Change of Form of Performance Guarantee

(1) If, after entry of this Consent Decree, Settling Performing Defendants desire to change the form or terms of any Performance Guarantee provided pursuant to this Section, Settling Performing Defendants may, on the anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, petition EPA in writing to request a change in form of the Performance Guarantee provided hereunder. The submission of such proposed revised or alternative for of Performance Guarantee shall be as provided in Paragraph 54. b.(2) of this Consent Decree.

(2) Settling Performing Defendants shall submit a written proposal for a revised or alternative form of Performance Guarantee to EPA which shall specify, at a minimum, the estimated cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of Performance Guarantee, including all proposed instruments or other documents required in order to make the proposed Performance Guarantee legally binding. The proposed revised or alternative form of Performance Guarantee must satisfy all requirements set forth or incorporated by reference in this Section. Settling Performing Defendants shall submit such proposed revised or alternative form of Performance Guarantee to EPA in accordance with Section XXIX (Notices and Submissions) of this Consent

Decree. EPA shall notify Settling Performing Defendants in writing of its decision to accept or reject a revised or alternative Performance Guarantee submitted pursuant to this subparagraph. Within ten days after receiving a written decision approving the proposed revised or alternative Performance Guarantee, Settling Performing Defendants shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such Performance Guarantee shall thereupon be fully effective. Settling Performing Defendants shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee legally binding to EPA within 30 days of receiving a written decision approving the proposed revised or alternative Performance Guarantee in accordance with Section XXIX (Notices and Submissions) of this Consent Decree with a copy to the United States and EPA as specified in Section XXIX (Notices and Submissions).

c. Release of Performance Guarantee. If Settling Performing Defendants receive written notice from EPA in accordance with Paragraph 56 hereof that the Work has been fully and finally completed in accordance with the terms of this Consent Decree, or if EPA otherwise so notifies Settling Performing Defendants in writing, Settling Performing Defendants may thereafter release, cancel, or discontinue the Performance Guarantee provided pursuant to this Section. Settling Performing Defendants shall not release, cancel, or discontinue any Performance Guarantee provided pursuant to this Section except as provided in this subparagraph. In the event of a dispute, Settling Performing Defendants may release, cancel, or discontinue the Performance Guarantee required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

XV. CERTIFICATION OF COMPLETION

55. Completion of the Remedial Action.

a. Within 90 days after Settling Performing Defendants conclude that the Remedial Action has been fully performed and the Performance Standards set forth in subparagraph c. of this Paragraph have been attained, Settling Performing Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Performing Defendants and EPA. If, after the pre-certification inspection, the Settling Performing Defendants still believe that the Remedial Action has been fully performed and the Performance Standards set forth in subparagraph c. have been attained, they shall submit a written report requesting certification to EPA for approval, pursuant to Section XII (EPA Approval of Plans and Other Submissions) within 30 days of the inspection. In the report, a registered professional engineer and the Settling Performing Defendants' Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Settling Performing Defendant or the Settling Performing Defendants' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission

is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Performing Defendants in writing of the activities that must be undertaken by Settling Performing Defendants pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards, provided, however, that EPA may only require Settling Performing Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 13 (not including the Indoor Air Program or Institutional Controls). EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Performing Defendants to submit a schedule to EPA for approval pursuant to Section XII (EPA Approval of Plans and Other Submissions). Settling Performing Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XXI (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Performing Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXIII (Covenants by Plaintiff). Certification of Completion of the Remedial Action shall not affect Settling Performing Defendants' obligations under this Consent Decree.

c. Settling Performing Defendants will have met the Performance Standards for the purposes of this Paragraph if: (1) the Performance Standards for soil in Section 3 of the SOW have been met; and (2) the Operational and Functional Phase of chemical oxidation agent injection into the trench at the western boundary of the CCI property and off-site has been completed for a period of one year.

56. Completion of the Work.

a. Within 90 days after Settling Performing Defendants conclude that all phases of the Work (including O&M), have been fully performed, Settling Performing Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Performing Defendants and EPA. If, after the pre-certification inspection, the Settling Performing Defendants still believe that the Work has been fully performed, Settling Performing Defendants shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Performing Defendant or the Settling Performing Defendants' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after review of the written report, EPA determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Performing Defendants in writing of the activities that must be undertaken by Settling Performing Defendants pursuant to this Consent Decree to complete the Work, provided, however, that EPA may only require Settling Performing Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 13 (not including the Indoor Air Program or Institutional Controls). EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XII (EPA Approval of Plans and Other Submissions). Settling Performing Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XXI (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Performing Defendants, that the Work has been performed in accordance with this Consent Decree, EPA will so notify the Settling Performing Defendants in writing.

XVI. EMERGENCY RESPONSE

57. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Performing Defendants shall, subject to Paragraph 58, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator. If the Project Coordinator is unavailable, the Settling Performing Defendants shall notify the EPA Region 7 Emergency Response Section. Settling Performing Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Performing Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Performing Defendants shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVII (Payments for Response Costs).

58. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site; or, to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or

minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXIII (Covenants by Plaintiff).

XVII. PAYMENT FOR RESPONSE COSTS

59. Within 30 days of the date the United States has lodged this Consent Decree with the Court, the Settling Performing Defendants shall: (a) establish an interest bearing account ("the CCI Escrow Account") in a duly chartered bank, and (b) provide payment instructions for the purpose of receiving payments from Settling Non-Performing Defendants, and Settling Federal Agencies. The Settling Defendants agree, and any agreement appertaining to the CCI Escrow Account will provide, that after EPA issues its written Certification of Completion of the Remedial Action pursuant to this Consent Decree, or if EPA takes over the Work pursuant to Paragraph 113 (and EPA's decision to do so is upheld pursuant to Section XXI (Dispute Resolution)), any funds that remain in the CCI Escrow Account, after the Settling Defendants have been reimbursed for costs of the Work they performed in compliance with the Consent Decree, shall be transferred to the Chemical Commodities Site Special Account. The amount due from each Settling Non-Performing Defendant is set forth in Appendix H. Payments by the Settling Federal Agencies shall be as set forth in Paragraph 68.

60. Within 30 days of the Effective Date, the Settling Non-Performing Defendants shall remit to the CCI Escrow Account, their respective payments for response costs as shown in Appendix H. Each Settling Non-Performing Defendant's payment includes an amount for: (a) past response costs; (b) projected future response costs to be incurred at or in connection with the Site; and (c) a premium to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, or by any other person, will exceed the estimated total response costs upon which the Settling Non-Performing Defendants' payments are based. Payments to the CCI Escrow Account shall be made in accordance with instructions provided by the Settling Performing Defendants.

61. In the event that payments required by Paragraph 60 are not made within 30 days of the Effective Date of this Consent Decree, Interest on the unpaid balance shall be paid at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), commencing on the Effective Date of this Consent Decree and accruing through the date of payment.

62. Settling Performing Defendants shall send notice to the United States and the EPA in the event that they do not receive the required payment from any Non-Performing Settling Defendant within 30 days of the Effective Date of the Consent Decree.

63. Funds in the CCI Escrow Account may only be used by the Settling Performing Defendants for necessary response costs incurred in completing the Work in accordance with the SOW, the ROD and this Consent Decree.

64. At the time of payment, Settling Non-Performing Defendants shall send notice that payment has been made to the United States, to EPA, and to the Settling Performing Defendants in accordance with Section XXIX (Notices and Submissions).

65. Payment for Future Response Costs by Settling Performing Defendants

a. Settling Performing Defendants shall reimburse EPA for Future Response Costs, except Future Oversight Costs, not inconsistent with the National Contingency Plan. On a periodic basis, the United States will send Settling Performing Defendants a bill requiring payment that includes an Itemized Cost Summary. Settling Performing Defendants shall make all payments within 45 days of Settling Performing Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 66. Settling Performing Defendants shall make all payments required by this Paragraph by certified or cashiers check or checks made payable to "EPA Hazardous Substance Superfund" referencing the name and address of the party making the payment, EPA Site/Spill ID Number 07 L3, and DOJ Case Number 90-11-3-1686. Settling Performing Defendants shall send the check(s) to

US EPA Region 7
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, Missouri 63197-9000

b. At the time of payment, Settling Performing Defendants shall send notice that payment has been made to the United States and to EPA in accordance with Section XXIX (Notices and Submissions).

c. The total amount to be paid by Settling Performing Defendants pursuant to Paragraph 65.a. shall be deposited in the Chemical Commodities Site Special Account within the Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

66. Settling Performing Defendants may contest payment of any Future Response Costs under Paragraph 65 if they determine that the costs are not Future Response Costs as defined herein, the United States has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States pursuant to Section XXIX (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Performing Defendants shall within the 45 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 65. Simultaneously, the Settling Performing Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Kansas and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Performing Defendants shall send to the United States, as provided in Section XXIX (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the

Settling Performing Defendants shall initiate the Dispute Resolution procedures in Section XXI (Dispute Resolution). If the United States prevails in the dispute, within 45 days of the resolution of the dispute, the Settling Performing Defendants shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 65. If the Settling Performing Defendants prevail concerning any aspect of the contested costs, the Settling Performing Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States in the manner described in Paragraph 65; Settling Performing Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XXI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Performing Defendants' obligation to reimburse the United States for its Future Response Costs.

67. In the event that the payments required by Paragraph 65 are not made within 45 days of the Settling Performing Defendants' receipt of the bill, Settling Performing Defendants shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the day following the date payment is due. The Interest shall accrue through the date of the Settling Performing Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Performing Defendants' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 93. The Settling Performing Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 65.

68. Payment by Settling Federal Agencies

a. As soon as reasonably practical after the Effective Date, the United States, on behalf of the Settling Federal Agencies, shall cause to be paid to the Settling Performing Defendants \$2,231,000 by electronic funds transfer pursuant to instructions to be provided by Settling Performing Defendants. Except with regard to the Pools Prairie TCE as defined in Paragraph 118, this payment and any payment pursuant to paragraphs 68.c. and 68.e. of this Consent Decree constitute Settling Federal Agencies' allocable share of the Response Costs incurred in performing the Work, including Future Response Costs as set forth in this Consent Decree.

b. If the Settling Federal Agencies fail to make the payment required by paragraph 68.a. within 120 days of the Effective Date, Interest on the unpaid balance shall be paid at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), commencing on the 121st day after the Effective Date.

c. The estimated total Response Costs for Work to be performed by Settling Performing Defendants under this Consent Decree is \$9,795,000. If the total Response Costs for Work to be performed by Respondents pursuant to this Consent Decree exceeds \$8,299,456 ("Additional Response Costs"), the United States, on behalf of the Settling Federal Agencies, shall pay 48% of all Additional Response Costs that are consistent with the National Contingency Plan. The Settling Federal Agencies shall not be responsible for the payment of

any Additional Response Costs that are incurred as a result of Settling Performing Defendants' failure to comply with any provision of this Consent Decree.

d. If the Settling Performing Defendants seek payment for 48% of the Additional Response Costs from the Settling Federal Agencies, the Settling Performing Defendants shall make a written demand for payment from the Settling Federal Agencies ("Federal Payment Demand"). The Federal Payment Demand shall include: (1) the amount of payment requested, (2) an explanation of why both the Response Costs and Additional Response Costs are necessary and consistent with the NCP, and (3) supporting documentation sufficient to show for each contractor, vendor, or other person to whom money was paid by Settling Performing Defendants, the amount paid and the services or goods provided. No more than three Federal Payment Demands shall be submitted in a calendar year.

e. If the Settling Performing Defendants comply with their obligations in paragraph 68.d. above, the United States, on behalf of Settling Federal Agencies, shall pay 48% of the Additional Response Costs incurred that are consistent with the NCP as soon as reasonably practical, less amounts withheld or disputed.

f. If the Settling Federal Agencies in good faith question or contest any invoiced fees or expense, in whole or in part, it shall have the right to withhold payment of such disputed amount; provided, however, that the Settling Federal Agencies shall notify the Settling Performing Defendants in writing of any disputed amount within 30 days of the date of such Federal Payment Demand and shall promptly make a good faith effort to resolve such dispute. In the event that the Settling Federal Agencies and the Settling Performing Defendants cannot informally resolve the dispute, either Party may seek formal Dispute Resolution, in accordance with 5 U.S.C. § 571 et seq., not less than 90 days after the date of the Federal Payment Demand. Disputes under this subparagraph shall not be resolved using the procedures in Section XXI (Dispute Resolution).

g. In the event that payment of Additional Response Costs required by paragraph 68.c. is not made within 120 days of receipt of the Federal Payment Demand, Interest on the unpaid amount shall be paid at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), commencing on the 121st day after the Settling Federal Agencies' receipt of the Federal Payment Demand and accruing through the date of payment.

69. Final Federal Payment Pursuant to Administrative Order on Consent

a. Pursuant to the May 15, 2000 Administrative Order on Consent ("AOC"), Docket No. 7-2000-0019) as of December 31, 2005 Boeing has incurred response costs in the total amount of \$3,889,882 in performing a Remedial Investigation and Feasibility Study at the Site. As required by the AOC, the United States, on behalf of the Defense Logistics Agency ("DLA"), has reimbursed \$1,944,941 of that amount. Boeing will bill DLA, consistent with the requirements of the AOC, for its share of all remaining response costs incurred pursuant to the AOC. Boeing will submit its final invoice under the AOC to DLA no later than twelve months following the Effective Date of this Consent Decree ("Federal AOC Payment Demand"). The United States will reimburse Boeing the amount necessary so that the United States will have paid 48% of the total response costs incurred to complete the AOC.

b. If DLA in good faith questions or contests any invoiced fees or expenses, in whole or in part, it shall have the right to withhold payment of such disputed amount; provided, however, that DLA shall notify Boeing in writing of any disputed amount within 30 days of the date of such Federal AOC Payment Demand and shall promptly make a good faith effort to resolve such dispute. In the event that DLA and Boeing cannot informally resolve the dispute, either Party may seek formal Dispute Resolution, in accordance with 5 U.S.C. § 571 et. seq., not less than 90 days after the date of the Federal AOC Payment Demand. Disputes under this subparagraph shall not be resolved using the procedures in Section XXI (Dispute Resolution).

c. Payment shall be made by electronic funds transfer pursuant to instructions to be provided by Boeing.

d. If the United States fails to make the payment required by Paragraph 69.a. within 120 days of the date of the Federal AOC payment Demand, Interest on the unpaid balance shall be paid at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) commencing on the 121st day after the date of the Federal Payment Demand.

e. Payment pursuant to the Paragraph will be a full and final settlement of all claims between Settling Federal Agencies and Boeing arising from the AOC except as specified in Paragraph 118 (Pools Prairie Reservations).

70. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of the Settling Federal Agencies under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

XVIII. DISBURSEMENT OF SPECIAL ACCOUNT FUNDS

71. Creation of Chemical Commodities Site Disbursement Special Account and Agreement to Disburse Funds to Settling Performing Defendants. Within 30 days after the Effective Date, EPA shall establish a new special account, the Chemical Commodities Site Disbursement Special Account, within the EPA Hazardous Substance Superfund and shall transfer \$332,737 from the Chemical Commodities Site Special Account to the Chemical Commodities Site Disbursement Special Account. Subject to the terms and conditions set forth in this Consent Decree, EPA agrees to make the funds in the Chemical Commodities Site Special Account, including Interest earned on the funds in the Chemical Commodities Site Disbursement Special Account, available for disbursement to Settling Performing Defendants as partial reimbursement for performance of the Work pursuant to this Consent Decree. EPA shall disburse such funds from the Chemical Commodities Site Disbursement Special Account to the Settling Performing Defendants in accordance with the procedures set forth in this Section.

72. Certification by Settling Performing Defendants and Method of Disbursing Funds From the Chemical Commodities Site Disbursement Special Account. EPA shall disburse the funds from the Chemical Commodities Site Disbursement Special Account including interest

thereon at the completion of the Remedial Design set forth in Paragraph 10 of this Consent Decree and in accordance with instructions provided by the Settling Performing Defendants. Within 90 days of the completion of the Remedial Design, Settling Performing Defendants shall submit to EPA a written Cost Summary and Certification of the complete and accurate total costs incurred and paid by Settling Performing Defendants for Remedial Design. Settling Performing Defendants' Cost Summary and Certification shall contain the following statement signed by the Settling Performing Defendants' Project Coordinator: "To the best of my knowledge, after thorough investigation and review of Settling Performing Defendants' detailed cost documentation of the Remedial Design, I certify that the information contained in or accompanying this submittal is true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment." The Settling Performing Defendants' Project Coordinator shall also provide a description of the cost materials reviewed that support the Cost Summary and Certification.

73. If EPA finds that the Cost Summary and Certification includes a mathematical accounting error, costs excluded under Paragraph 74, costs that are inadequately documented, or costs submitted in a prior Cost Summary and Certification, it will notify Settling Performing Defendants and provide an opportunity to cure the deficiency by submitting a revised Cost Summary and Certification. If Settling Performing Defendants fail to cure the deficiency within 10 days after being notified of, and given the opportunity to cure, the deficiency, EPA will recalculate Settling Performing Defendants' costs eligible for disbursement for the submission and disburse the corrected amount to Settling Performing Defendants in accordance with the procedures in Paragraph 72 of this Section. Settling Performing Defendants may dispute EPA's recalculation under this Paragraph pursuant to Section XXI (Dispute Resolution). In no event shall Settling Performing Defendants be disbursed funds from the Chemical Commodities Site Disbursement Special Account in excess of amounts properly documented in a Cost Summary and Certification accepted or modified by EPA.

74. Response Costs Excluded From Disbursement. The following costs are excluded from disbursement to the Settling Performing Defendants from the Chemical Commodities Site Disbursement Special Account and the Settling Performing Defendants shall not submit a request for disbursement that includes any of the following cost items: (a) Future Response Costs paid pursuant to Paragraph 65 of this Consent Decree; (b) attorneys' fees or costs, except those attorneys' fees or costs incurred by Settling Performing Defendants pursuant to Section X of this Consent Decree related to access for purposes of the implementation of the Work; (c) costs of any response activities Settling Performing Defendants perform that are not required under, or approved by EPA pursuant to, this Consent Decree; (d) costs related to Settling Performing Defendants' litigation, settlement, or responsible party search activities; (e) interest or stipulated or other penalties paid pursuant to Paragraphs 92, 93, and 94 of this Consent Decree; or (f) costs reimbursed or expended by Settling Performing Defendants from the CCI Escrow Account established pursuant to Section XVII of this Consent Decree.

75. Termination of Disbursements from the Chemical Commodities Site Disbursement Special Account. EPA's obligation to disburse funds from the Chemical Commodities Site Disbursement Special Account under this Consent Decree shall terminate upon EPA's determination that Settling Performing Defendants: (a) have knowingly submitted a materially false or misleading Cost Summary and Certification; (b) have submitted a materially

inaccurate or incomplete Cost Summary and Certification, and have failed to correct the materially inaccurate or incomplete Cost Summary and Certification within 30 days after being notified of, and given the opportunity to cure, the deficiency; or (c) failed to submit a Cost Summary and Certification as required by Paragraph 72 within 30 days (or such longer period as EPA agrees) after being notified that EPA intends to terminate its obligation to make disbursements pursuant to this Section because of Settling Performing Defendants' failure to submit the Cost Summary and Certification as required by Paragraph 72. EPA's obligation to disburse funds from the Chemical Commodities Site Disbursement Special Account shall also terminate upon EPA's assumption of performance of any portion of the Work pursuant to Paragraph 113, when such assumption of performance of the Work is not challenged by Settling Performing Defendants or, if challenged is upheld under Section XXI (Dispute Resolution). Settling Performing Defendants may dispute EPA's termination of special account disbursements under Section XXI (Dispute Resolution).

76. Recapture of Chemical Commodities Site Disbursement Special Account Disbursements. Upon termination of disbursements from the Chemical Commodities Site Disbursement Special Account under Paragraph 75, if EPA has previously disbursed funds from the Chemical Commodities Site Disbursement Special Account for activities specifically related to the reason for termination (e.g. discovery of a materially false or misleading submission after disbursement of funds based on that submission), EPA shall submit a bill to Settling Performing Defendants for those amounts already disbursed from the Chemical Commodities Site Disbursement Special Account specifically related to the reason for termination, plus Interest on that amount covering the period from the date of disbursement of the funds by EPA to the date of repayment of the funds by Settling Performing Defendants. Within 30 days of EPA's bill, Settling Performing Defendants shall reimburse the Hazardous Substance Superfund for the total amount billed by a cashier's check or checks made payable to "EPA Hazardous Substance Superfund" referencing the name and address of the party making payment, EPA Site/Spill Identification Number 07 L3, and DOJ Case Number 90-11-3-1686. Settling Performing Defendants shall send the check(s) to:

US EPA Region 7
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, Missouri 63197-9000

77. At the time of payment pursuant to Paragraph 76, Settling Performing Defendants shall send notice that payment has been made to the United States and to EPA, in accordance with Section XXIX (Notices and Submissions). Upon receipt of payment, EPA may deposit all or any portion thereof in the Chemical Commodities Site Special Account or the Hazardous Substance Superfund. The determination of where to deposit, or how to use the funds, shall not be subject to challenge by Settling Performing Defendants pursuant to the dispute resolution provisions of this Consent Decree or in any other forum. Settling Performing Defendants may dispute EPA's determination as to recapture of funds pursuant to Section XXI (Dispute Resolution).

78. Balance of Chemical Commodities Site Disbursement Special Account Funds. After EPA issues its written Certification of Completion of the Remedial Action pursuant to this Consent Decree, and after EPA completes all disbursements to Settling Performing Defendants in accordance with this Section, if any funds remain in the Chemical Commodities Site Disbursement Special Account, EPA may transfer such funds to the Chemical Commodities Site Special Account or the Hazardous Substance Superfund. Any transfer of funds to the Chemical Commodities Site Special Account or the Hazardous Substance Superfund shall not be subject to challenge by the Settling Performing Defendants pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

XIX. INDEMNIFICATION AND INSURANCE

79. Settling Performing Defendants' Indemnification of the United States.

a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Performing Defendants as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Settling Performing Defendants shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Performing Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Performing Defendants as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Further, the Settling Performing Defendants agree to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Settling Performing Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Performing Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Performing Defendants nor any such contractor shall be considered an agent of the United States.

b. The United States shall give Settling Performing Defendants notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 79, and shall consult with Settling Performing Defendants prior to settling such claim.

80. Settling Performing Defendants waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Performing Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Performing Defendants shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Performing

Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

81. No later than 15 days before commencing any on-site Work, Settling Performing Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 55 of Section XV (Certification of Completion) comprehensive general liability insurance with limits of \$1 million dollars, combined single limit, and automobile liability insurance with limits of \$1 million dollars, combined single limit, naming the United States as an additional insured. In addition, for the duration of this Consent Decree, Settling Performing Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Performing Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Performing Defendants shall provide to EPA certificates of such insurance. Settling Performing Defendants shall resubmit such certificates each year on the anniversary of the Effective Date. If Settling Performing Defendants demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Performing Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XX. FORCE MAJEURE

82. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Performing Defendants, of any entity controlled by Settling Performing Defendants, or of Settling Performing Defendants' contractors that delays or prevents the performance of any obligation under this Consent Decree despite Settling Performing Defendants' best efforts to fulfill the obligation. The requirement that the Settling Performing Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

83. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Performing Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, the Director of the Superfund Division, EPA Region 7, within 48 hours of when Settling Performing Defendants first knew that the event might cause a delay. Within 5 days thereafter, Settling Performing Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Performing Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Performing

Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Performing Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Performing Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Performing Defendants shall be deemed to know of any circumstance of which Settling Performing Defendants, any entity controlled by Settling Performing Defendants, or Settling Performing Defendants' contractors knew or should have known.

84. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Performing Defendants in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Performing Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

85. If the Settling Performing Defendants elect to invoke the dispute resolution procedures set forth in Section XXI (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Performing Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay and that Settling Performing Defendants complied with the requirements of Paragraphs 82 and 83 above. If Settling Performing Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Performing Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XXI. DISPUTE RESOLUTION

86. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

87. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 30 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

88. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 89 or Paragraph 90.

b. Within 30 days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 89 or 90. Within 20 days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 89 or 90, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 89 and 90.

89. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (a) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (b) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Superfund Division, EPA Region 7, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 89.a. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 89.c and d.

c. Any administrative decision made by EPA pursuant to Paragraph 89.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on all Parties within 10 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Superfund Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 89.a.

90. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law shall be governed by this Paragraph.

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 88, the Director of the Superfund Division, EPA Region 7, will issue a final decision resolving the dispute. The Superfund Division Director's decision shall be binding on the Settling Defendants unless, within 10 days of receipt of the decision, the Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

b. Notwithstanding Paragraph M of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

91. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 100. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXII (Stipulated Penalties).

XXII. STIPULATED PENALTIES

92. a. In the event that payments required by Paragraph 60 of this Consent Decree are not made within 30 days of the Effective Date of this Consent Decree, the non-complying Settling Non-Performing Defendants shall pay to EPA as a stipulated penalty, in addition to the Interest required by Paragraph 61, as follows:

Penalty Per Violation Per Day	Period of Noncompliance
\$500	1 st through 14 th day
\$1,000	15 th through 30 th day
\$1,500	31 st day and beyond

b. Settling Performing Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 93 and 94 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XX (Force Majeure). "Compliance" by Settling Performing Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

93. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph 93.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1 st through 14 th day
\$1,000	15 th through 30 th day
\$1,500	31 st day and beyond

b. Compliance Milestones.

(1) Failure to submit a Remedial Design Work Plan within 90 days after EPA's issuance of an authorization to proceed pursuant to Paragraph 9 of this Consent Decree.

(2) Failure to submit a Remedial Action Work Plan within 60 days after approval of the final design submittal pursuant to Paragraph 11 of this Consent Decree.

(3) Failure to complete an Interim RA Report.

(4) Failure to make payment of Future Response Costs within 45 days of receipt of a bill from EPA.

94. Stipulated Penalty Amounts - Reports.

The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports pursuant to Section XI (Reporting Requirements):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$100	1 st through 14 th day
\$500	15 th through 30 th day
\$1,000	31 st day and beyond

95. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 113, Settling Performing Defendants shall be liable for a stipulated penalty in the amount of \$100,000.

96. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section XII (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Performing Defendants of any deficiency; (b) with respect to a decision by the Director of the Superfund Division, EPA Region 7, under Paragraph 89.b or 90.a of Section XXI (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Performing Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (c) with respect to judicial review by this Court of any dispute under Section XXI (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

97. Following EPA's determination that a Settling Defendant has failed to comply with a requirement of this Consent Decree, EPA may give the non-complying Settling Defendant written notification of the same and describe the noncompliance. EPA may send the Settling Defendant a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the non-complying Settling Defendant of a violation.

98. All penalties accruing under this Section shall be due and payable to the United States within 45 days of a demand for payment of the penalties from EPA, unless the Settling Defendant invokes the Dispute Resolution procedures under Section XXI (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. EPA Region 7, Superfund Payments, Cincinnati Finance Center, P.O. Box 979076, St. Louis, Missouri 63197-9000, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID # 07 L3, the DOJ Case Number 90-11-3-1686, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States and EPA as provided in Section XXIX (Notices and Submissions).

99. The payment of penalties shall not alter in any way Settling Performing Defendants' obligation to complete the performance of the Work required under this Consent Decree.

100. Penalties shall continue to accrue as provided in Paragraph 96 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendant shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Defendant shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to the Settling Defendant to the extent that they prevail.

101. If the non-complying Settling Defendant fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 98.

102. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9621(l), provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9621(l), for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

103. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XXIII. COVENANTS BY PLAINTIFF

104. In consideration of the actions that will be performed and the payments that will be made by the Settling Performing Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 107, 108, 110, 111, 112, 113, and 114 of this

Section, the United States covenants not to sue or to take administrative action against Settling Performing Defendants pursuant to Sections 106, 107(a) and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607(a) and 9613, and Section 7003 of RCRA, 42 U.S.C. § 6973, for all Past Response Cost and response actions taken or to be taken and all response costs incurred and to be incurred pursuant to this Consent Decree by the United States, Settling Defendants or any other person with respect to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the Effective Date of this Consent Decree. With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 55.b. of Section XV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by Settling Performing Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Performing Defendants and do not extend to any other person.

105. In consideration of the payments that will be made by the Settling Non-Performing Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraphs 107, 108, 111 and 112, the United States covenants not to sue or take administrative actions against any of the Settling Non-Performing Defendants pursuant to Sections 106, 107(a) and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607(a) and 9613, and Section 7003 of RCRA, 42 U.S.C. § 6973, for all Past Response Costs and response actions taken or to be taken and all response costs incurred and to be incurred pursuant to this Consent Decree by the United States, Settling Defendants or any other person with respect to the Site. With respect to present and future liability, this covenant not to sue shall take effect for each Settling Non-Performing Defendant upon receipt of that Settling Non-Performing Defendant's payment as required by Section XVII (Payment for Response Costs) of this Consent Decree. With respect to each Settling Non-Performing Defendant, individually, this covenant not to sue is conditioned upon: (a) the satisfactory performance by the Settling Non-Performing Defendant of all obligations of the Settling Non-Performing Defendant under this Consent Decree; and (b) the veracity of the information provided to EPA by the Settling Non-Performing Defendant relating to the Settling Non-Performing Defendant's involvement with the Site. This covenant not to sue extends only to the Settling Non-Performing Defendants and does not extend to any other person. The obligations of the Settling Non-Performing Defendants hereunder are not joint and several. Failure of any Settling Non-Performing Defendant to perform its obligations and/or provide accurate information to EPA, shall not effect the validity of the covenant not to sue or take administrative action provided to any other Settling Non-Performing Defendant.

106. In consideration of the payments that will be made by the Settling Federal Agencies under the terms of the Consent Decree, and except as specifically provided in Paragraphs 107, 108, 110, 111, 112, 113 and 114 of this Section, EPA covenants not to take administrative action against the Settling Federal Agencies pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of RCRA, 42 U.S.C. § 6973, for all response actions taken or to be taken and all response costs incurred and to be incurred pursuant to this Consent Decree by the United States, Settling Defendants or any other person with respect to the Site. Except with respect to future liability, EPA's covenant shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Section XV (Certification of Completion). EPA's covenant is conditioned upon the satisfactory performance by Settling Federal Agencies of their obligations under this Consent Decree. EPA's covenant extends only to the Settling Federal Agencies and does not extend to any other person.

XXIV. RESERVATIONS OF RIGHTS

107. United States' Pre-certification Reservations. Except as expressly provided in this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Performing Defendants, Settling Non-Performing Defendants identified in Appendix F1, and BNSF, and EPA reserves the right to issue an administrative order seeking to compel the Settling Federal Agencies, (a) to perform further response actions relating to the Site, subject to the monetary limitations set forth in Paragraph 23 of this Consent Decree, or (b) to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action;

- (i) conditions at the Site, previously unknown to EPA, are discovered, or
- (ii) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

108. United States' Post-certification Reservations. Except as expressly provided in this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Performing Defendants, Settling Non-Performing Defendants identified in Appendix F1, and BNSF, and EPA reserves the right to issue an administrative order seeking to compel Settling Federal Agencies, (a) to perform further response actions relating to the Site, subject to the monetary limitations set forth in Paragraph 23 of this Consent Decree, or (b) to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

- (i) conditions at the Site, previously unknown to EPA, are discovered, or
- (ii) information previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

109. For purposes of Paragraph 107, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 108, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

110. General reservations of rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Performing Defendants, and EPA and the federal natural resources trustees reserve, and this Consent Decree is without prejudice to, all rights against the Settling Federal Agencies, with respect to all matters not expressly included within Plaintiff's covenants. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Performing Defendants, and EPA and the federal natural resources trustees reserve all administrative rights against the Settling Federal Agencies, with respect to:

a. claims based on a failure by Settling Performing Defendants or the Settling Federal Agencies to meet a requirement of this Consent Decree;

b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;

c. liability based upon the Settling Performing Defendants' or Settling Federal Agencies' ownership or operation of the Site, or upon the Settling Performing Defendants' or Settling Federal Agencies' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, or as otherwise ordered by EPA, after signature of this Consent Decree by the Settling Performing Defendants or the Settling Federal Agencies;

d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

e. criminal liability;

f. liability for violations of federal or state law which occur during or after implementation of the Remedial Action;

g. liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 13 (Modification of the SOW or Related Work Plans); provided, however, EPA will not require Settling Performing Defendants to implement the Indoor Air Program or Institutional Controls; and

h. counterclaims against Boeing pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, and any claims, causes of action, demands or available defenses to liability for, *inter alia*, indemnification, contribution or cost recovery if Boeing asserts a claim against the United States pursuant to Paragraph 118 of this Consent Decree (Boeing's Pools Prairie reservations).

111. With respect to the De Minimis Settling Non-Performing Defendants identified in Appendix F-2 and BNSF, the United States reserves, and this Consent Decree is without prejudice to, all rights against the De Minimis Settling Non-Performing Defendants and BNSF with respect to all matters not expressly included within Plaintiff's covenants. Notwithstanding

any other provision of this Consent Decree, the United States reserves all rights against De Minimis Settling Non-Performing Defendants and BNSF with respect to:

a. claims based on a failure by the De Minimis Settling Non-Performing Defendants or BNSF to meet a requirement of this Consent Decree;

b. liability based upon the ownership or operation of the Site by the De Minimis Settling Non-Performing Defendants, or upon the transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at, or in connection with, the Site by the De Minimis Settling Non-Performing Defendants or BNSF, after signature of this Consent Decree by the De Minimis Settling Non-Performing Defendants and BNSF;

c. liability to perform response actions and/or to reimburse the United States for additional response costs, if information is discovered which indicates that any individual Settling Non-Performing Defendant identified in Appendix F-2 contributed hazardous substances to the Site in such greater amount or of such greater toxicity or other hazardous effects that such Settling Non-Performing Defendant no longer qualifies as a *de minimis* party at the Site because such Settling Non-Performing Defendant contributed greater than 1% of the hazardous substances at the Site, or contributed hazardous substances which are significantly more toxic or are of significantly great hazardous effect than other hazardous substances at the Site;

d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

e. criminal liability; or

f. liability arising from the past, present or future disposal, release or threat of release of a hazardous substance, pollutant or contaminant outside of the Site.

112. With respect to the Non-De Minimis Settling Non-Performing Defendants identified in Appendix F-1, the United States reserves, and this Consent Decree is without prejudice to, all rights against the Non-De Minimis Settling Non-Performing Defendants with respect to all matters not expressly included within Plaintiff's covenants. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against the Non-De Minimis Settling Non-Performing Defendants with respect to:

a. claims based on a failure by Non-De Minimis Settling Non-Performing Defendants to meet a requirement of this Consent Decree;

b. liability based upon the ownership or operation of the Site, or the transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, by the Non-De Minimis Settling Non-Performing Defendants, other than as provided in the ROD, or as otherwise ordered by EPA, after signature of this Consent Decree by the Non-De Minimis Settling Non-Performing Defendants;

- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. criminal liability;
- e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant or contaminant outside of the Site; or
- f. liability for reimbursement of response costs if total future response costs incurred or to be incurred at or in connection with the Site by the United States or any other person exceed \$15,742,276.

113. Work Takeover. In the event EPA determines that Settling Performing Defendants have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. Settling Performing Defendants may invoke the procedures set forth in Section XXI (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Settling Performing Defendants shall pay pursuant to Section XVII (Payment for Response Costs).

114. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XXV. COVENANTS BY SETTLING DEFENDANTS AND SETTLING FEDERAL AGENCIES

115. Covenant Not to Sue by Settling Defendants. Subject to the reservations in Paragraph 117 and except as provided in Section XVIII (Disbursements from Chemical Commodities Site Disbursement Special Account) and Paragraph 118, or as relating to any contractual obligations between Settling Defendants and the United States, including but not limited to the Settling Federal Agencies, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States for all Past Response Costs and response actions taken or to be taken and all response costs incurred and to be incurred pursuant to this Consent Decree, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612 and 9613, or any other provision of law;
- b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607 or 9613, related all past response costs and all response actions taken or to be taken and all response costs incurred and to be incurred pursuant to this Consent Decree by the United States, Settling Defendants or any other person with respect to the Site;

c. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution;

d. any direct or indirect claim for disbursement from the Chemical Commodities Site Disbursement Special Account; and

e. Except as provided in Paragraph 120 (Settling Performing Defendants' and Settling Non-Performing Defendants' covenant not to sue each other) and Paragraph 121 (waiver of Claim-splitting Defenses), these covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 107, 108, 110(a)-(d) and (g)-(h), 111 (a)-(d) and (f) and 112 (b)-(c) and (e)-(f), but only to the extent that Settling Defendants' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

116. Covenants by Settling Federal Agencies. Settling Federal Agencies hereby agree not to assert any direct or indirect claim for reimbursement from the Hazardous Substance Response Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 112, 113, or any other provision of law with respect to the Site or this Consent Decree. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a Settling Federal Agency in the performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

117. The Settling Performing Defendants reserve, and this Consent Decree is without prejudice to: (a) claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Performing Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA; and (b) contribution and other claims against the Settling Federal Agencies in the event any claim is asserted by the United States against the Settling Defendants under the authority of or under Paragraphs 107, 108, 110(a)-(d) and (g)-(h), 111 (a)-(d) and (f) and 112 (b)-(c) and (e)-(f) but only to the same extent and for the same matters, transactions, or occurrences as are raised in the claim of the United States against Settling Performing Defendants.

118. Boeing's Additional Reservation of Rights

a. For the purposes of this Consent Decree, the "Pools Prairie TCE" shall be the volume of used TCE sent to the CCI Site from a facility in Neosho, Missouri now referred to by EPA as the Pools Prairie Superfund Site.

b. Boeing reserves any right it may have under Sections 107 and 113(f) of CERCLA, 42 U.S.C. §§ 9607 and 9613(f), to recover from the United States (and/or any other person not a party to this Consent Decree, who is liable for response costs incurred in connection with the Site), any or all of the amounts paid or costs incurred at the Site or under this Consent Decree attributable to the Pools Prairie TCE. Furthermore, notwithstanding anything in this Consent Decree to the contrary, except with respect to preauthorization of funds and claims against the Fund, Boeing reserves its rights, if any, to assert any claims, causes of action, demands or available defenses to liability for, *inter alia*, indemnification, contribution or cost recovery for any or all of the amounts paid for costs incurred by Boeing at the Site or under this Consent Decree attributable to the Pools Prairie TCE.

c. Boeing and the United States agree that the payments made by the United States under this Consent Decree are not intended to discharge any alleged federal liability at this Site arising from the Pools Prairie TCE and shall not serve as precedent or evidence as to what their appropriate final allocation of liability for such costs should be.

d. Nothing in this Consent Decree shall be construed as a waiver by Settling Defendants of any right they may have to include costs or expenses incurred in implementation of this Consent Decree, costs or expenses incurred or paid pursuant to this Consent Decree, or costs or expenses of any other work at or in connection with the Site in their allowable costs for purposes of pricing under contracts with the United States, to the extent allowed by law, rule or regulation.

119. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

120. Settling Performing Defendants, the Settling Federal Agencies and Settling Non-Performing Defendants covenant not to sue and agree not to assert any direct or indirect claims against each other or against their respective officers, directors, employees, or agents with respect to Matters Addressed in this Consent Decree, except as necessary to enforce the terms of any agreements by or between them relating to Matters Addressed in this Consent Decree. This Paragraph shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

121. Settling Performing Defendants and Settling Federal Agencies agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person that will enter into a final CERCLA § 122(g) de minimis settlement with respect to the Site as of the Effective Date. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Performing

Defendant or Settling Federal Agency may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Performing Defendant or Settling Federal Agency.

XXVI. EFFECT OF SETTLEMENT-- CONTRIBUTION PROTECTION

122. Except as provided in Paragraph 121, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Except as provided in Paragraph 121, each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

123. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants and the Settling Federal Agencies are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), or other applicable law, for Matters Addressed in this Consent Decree. The "Matters Addressed" in this settlement are all Past Response Costs and response actions taken or to be taken and all response costs incurred and to be incurred pursuant to this Consent Decree by the United States, Settling Defendants or any other person with respect to the Site. The protection against claims for contribution afforded by this Paragraph and Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), shall not bar any claim or counterclaim by Boeing or any counterclaim by the United States with respect to response costs associated with the Pools Prairie TCE pursuant to Paragraphs 110 and 118 (United States' and Boeing's Pools Prairie reservations).

124. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than 30 days prior to the initiation of such suit or claim.

125. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will use best efforts to notify in writing the United States within 30 days of service of the complaint on them. In addition, Settling Defendants shall use best efforts to notify the United States within 30 days of service or receipt of any Motion for Summary Judgment and within 30 days of receipt of any order from a court setting a case for trial.

126. In any subsequent administrative or judicial proceeding initiated by one party against another injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, the party against whom the claim is initiated (or the defending party) shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the claimant in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXIII (Covenants by Plaintiffs).

XXVII. ACCESS TO INFORMATION

127. Settling Performing Defendants shall provide to EPA, upon request, copies of all non-privileged documents and information within their possession or control or that of their contractors or agents relating to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work.

128. Business Confidential and Privileged Documents.

a. Settling Performing Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Performing Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Settling Performing Defendants.

b. The Settling Performing Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Performing Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Performing Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

129. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXVIII. RETENTION OF RECORDS

130. Until 10 years after the Settling Performing Defendants' receipt of EPA's notification pursuant to Paragraph 56.b. of Section XV (Certification of Completion of the Work), each Settling Performing Defendant shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site. Each Settling Performing Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all

non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each Settling Performing Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary. The United States acknowledges that each Settling Federal Agency is subject to all applicable Federal record retention laws, regulations, and policies and hereby certifies that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

131. At the conclusion of this document retention period, Settling Performing Defendants shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Performing Defendants shall deliver any such records or documents to EPA. The Settling Performing Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Performing Defendants assert such a privilege, they shall provide the Plaintiffs with the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of the author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Settling Performing Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

132. By signing this Consent Decree, each Settling Defendant certifies individually that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Defendant regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

XXIX. NOTICES AND SUBMISSIONS

133. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and the Settling Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-1686

Chief, Environmental Defense Section
United States Department of Justice
P.O. Box 23987
Washington, D.C. 20026-3986
Re: DJ# 90-11-3-1686

As to EPA:

Mary Peterson
EPA Project Coordinator
United States Environmental Protection Agency
Region 7
901 North Fifth Street
Kansas City, Kansas 66101

Carla Kohler
Resources & Financial Management Branch
United States Environmental Protection Agency
Region 7
901 North Fifth Street
Kansas City, Kansas 66101

As to the Settling Performing Defendants:

Steve Shestag
Director, Environmental Remediation
Environment, Health and Safety
The Boeing Company

5800 Woolsey Canyon Road
M/C T487
Canoga Park, CA 91304-1148

Paul Carlson, Counsel
The Boeing Company
2710 160th SE
33-08 Building M/C7A-XP
Bellevue, WA 98008

XXX. EFFECTIVE DATE

134. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXXI. RETENTION OF JURISDICTION

135. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XXI (Dispute Resolution) hereof.

XXXII. APPENDICES

136. The following appendices are attached to and incorporated into this Consent Decree:

- “Appendix A” is the ROD.
- “Appendix B” is the SOW.
- “Appendix C” is the description and/or map of the Site.
- “Appendix D” is the complete list of the Settling Defendants.
- “Appendix E” is the complete list of the Settling Performing Defendants.
- “Appendix F-1” is the complete list of the Non-De Minimis Settling Non-Performing Defendants.
- “Appendix F-2” is the complete list of the De Minimis Settling Non-Performing Defendants.
- “Appendix G” is the complete list of the Settling Federal Agencies.
- “Appendix H” is the Schedule of Payments by Settling Non-Performing Defendants.
- “Appendix I” is the Access Agreement between BNSF and EPA.

XXXIII. COMMUNITY RELATIONS

137. EPA will determine the appropriate role for the Settling Performing Defendants with respect to community relations. The Parties shall also cooperate with each other in providing information regarding the Work to the public. As requested by EPA, Settling Performing Defendants shall reasonably participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XXXIV. MODIFICATION

138. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and the Settling Performing Defendants. All such modifications shall be made in writing.

139. Except as provided in Paragraph 13 (Modification of the SOW or Related Work Plans), no material modifications shall be made to the SOW without written notification to and written approval of the United States, Settling Performing Defendants, and the Court, if such modifications fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. 300.435(c)(2)(B)(ii). Modifications to the SOW that do not materially alter that document, or material modifications to the SOW that do not fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. 300.435 (c)(2)(B)(ii), may be made by written agreement between EPA and the Settling Performing Defendants.

140. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

141. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. Pursuant to Section 7003(d) of RCRA, 42 U.S.C. § 6973(d), notice, an opportunity to comment, and an opportunity for a public meeting is given for a period of not less than 30 days. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

142. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXVI. SIGNATORIES/SERVICE

143. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the

Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

144. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

145. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. The parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the court expressly declines to enter this Consent Decree.

XXXVII. FINAL JUDGMENT

146. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the parties with respect to the settlement embodied in the Consent Decree. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

147. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS __ DAY OF _____, 20__.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States of America v. Ashland Inc., et al., Civil Action No. 6:08-cv-01401-MLB-KMH relating to the Chemical Commodities Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 12/22/08

Ronald J. Tenpas
Assistant Attorney General
Environment and Natural Resources
Division

Elizabeth Loeb
Trial Attorney
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
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Eileen T. McDonough
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Environmental Defense Section
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P.O. Box 23986
Washington, DC 20044-7611
(202) 514-3126

FOR THE UNITED STATES OF AMERICA

MARIETTA PARKER
Acting United States Attorney

EMILY METZGER
Assistant United States Attorney
Supreme Court Bar No. 10750
Suite 1200
301 N. Main Street
Wichita, KS 67202
(316) 269-6481

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 7

Date: 7/22/08

Cecilia Tapia
Director of the Superfund Division
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, KS 66101

7/22/08

Barbara L. Peterson
Assistant Regional Counsel
U.S. Environmental Protection Agency
901 N. 5th Street
Kansas City, KS 66101

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. Ashland Inc. et al., Civil Action No. 6:08-cv-01401 relating to the Chemical Commodities Superfund Site.

FOR DEFENDANT ASHLAND INC.

Date: 7/10/08



David M. Abner
Senior Counsel

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Corporation Service Company
Statutory Agent
27111 Centerville Road, Suite 40
Wilmington, DE 19808

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. Ashland Inc., et al., Civil Action No. 6:08-CV-1401, relating to the Chemical Commodities Superfund Site.

FOR DEFENDANT THE BOEING COMPANY

Date: July 10, 2008

Steve Shestak
Director, Environmental Remediation

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Corporation Service Company
200 S.W. 30th Street
Topeka, Kansas 66611-0000

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. Ashland Inc., et al., Civil Action No. 6:08-cv-01401, relating to the Chemical Commodities Superfund Site.

FOR DEFENDANT CERTAINTIED CORPORATION 

Date: 7-9-08



~~Lauren P. Alterman~~
Associate General Counsel

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Lauren P. Alterman
Associate General Counsel
750 E. Swedesford Road
Valley Forge, PA 19482

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. Ashland Inc., et al., Civil Action No. 6:08-cv-01401 relating to the Chemical Commodities Superfund Site.

FOR DEFENDANT ALLIANT TECHSYSTEMS INC., AS SUCCESSOR TO CORDANT TECHNOLOGIES INC. AND AS SUCCESSOR TO HERCULES, INC.

Date: 7-21-08

Caren M. Fitzgerald
Vice President & Assistant General Counsel

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Caren M. Fitzgerald
Vice President & Assistant General Counsel
Alliant TechSystems Inc.
MN-01-4010
5050 Lincoln Drive
Edina, MN 55436-1097

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. Ashland Inc., et al., Civil Action No. 08-CR-01401, relating to the Chemical Commodities Superfund Site.

FOR DEFENDANT HALLMARK CARDS INCORPORATED

Date: July 14, 2008


Brian E. Gardner

Executive Vice President and General Counsel

Agent Authorized to Accept Service on Behalf of Above-signed Party:

General Counsel
Hallmark Cards Incorporated
2501 McGee Trafficway, #339
Kansas City, Missouri 64108

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. Ashland Inc., et al., Civil Action No. 6:08-cv-01401, relating to the Chemical Commodities Superfund Site.

FOR DEFENDANT LUCENT TECHNOLOGIES INC., AS SUCCESSOR TO WESTERN ELECTRIC CO. AND A T & T TECHNOLOGIES INC.

Date: 7/25/08

Patrick Morrison
Vice President

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Andrew C. Brought
Spencer Fane Britt & Browne LLP
1000 Walnut, Suite 1400
Kansas City, Missouri 64106

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. Ashland Inc., et al., Civil Action No. 6:08-CV-01401, relating to the Chemical Commodities Superfund Site.

FOR DEFENDANT HONEYWELL FEDERAL MANUFACTURING AND TECHNOLOGIES LLC

Date: July 21, 2008

David A. Sosinski
General Counsel

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Corporation Service Company
2711 Centerville Road, Suite 400
Wilmington, Delaware 19808

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. Ashland Inc., et al., Civil Action No. 08-cv-01401, relating to the Chemical Commodities Superfund Site.

FOR DEFENDANT MALLINCKRODT INC.

Date: 7/15/2008

Robert T. Budenholzer
Vice President



Agent Authorized to Accept Service on Behalf of Above-signed Party:

CT Corporation
120 South Central Avenue
Clayton, Missouri 63105

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. Ashland Inc., et al., Civil Action No. 08-cv-01401, relating to the Chemical Commodities Superfund Site.

FOR DEFENDANT BNSF RAILWAY COMPANY

Date: 7-10-08

Mark A. Schulze
Vice-President Safety, Training and Operational
Support

Agent Authorized to Accept Service on Behalf of Above-signed Party:

CT Corporation
350 N. St. Paul Street
Dallas, Texas 75201